

[\*Caccavale v. Northeast Utilities\*](#), 91-ERA-3 (Dep. Sec'y Dec. 18, 1990)

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U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR  
WASHINGTON, D.C.  
20210

DATE: December 18, 1990  
CASE NO. 91-ERA-3

IN THE MATTER OF

GENNARO CACCAVALE,  
COMPLAINANT,

v.

NORTHEAST UTILITIES,  
RESPONDENT.

BEFORE: THE ACTING SECRETARY OF LABOR<sup>1</sup>

FINAL ORDER OF DISMISSAL

Before me for review is the Recommended Decision and Order Dismissing Complaint issued by Administrative Law Judge (ALJ) Martin J. Dolan, Jr., on November 29, 1990, in the captioned case which arises under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982). The ALJ's decision and order dismisses the case with prejudice under Fed. R. Civ. P. 41(a)(1)(ii) on the basis of Complainant's written Withdrawal of Complaint which is signed also by Respondent.

Neither the ERA nor its implementing regulations at 29 C.F.R. Part 24 (1990) provides for voluntary dismissals of complaints

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and, therefore, where a complainant in a case arising under Part 24 has sought a voluntary dismissal, Rule 41(a) of the Federal Rules of Civil Procedure for the United States

District Courts has been applied. *See Nolder v. Raymond Kaiser Engineers, Inc.*, Case No. 84-ERA-5, Sec. Order, June 28, 1985, slip op. at 6-7.

The ALJ properly applied Fed. R. Civ. P. 41(a)(1)(ii) to this case. Complainant's Withdrawal of Complaint, signed by the parties and requesting dismissal with prejudice, constitutes a stipulation of dismissal within Rule 41(a)(1)(ii). *See Nunn v. Duke Power Co.*, Case No. 84-ERA-27, Sec. Order, September 29, 1989; *Hooks v. Transportation Services, Inc.*, Case No. 88-STA-7, Sec. Order, June 24, 1988. I note that the withdrawal states that Complainant has similar claims pending in Connecticut Superior Court and that there exists no settlement agreement between the parties in this matter. Respondent expressly concurs in the dismissal with prejudice and without costs or attorney's fees to either party.

Based on the foregoing, I fully agree with the ALJ's recommendation that this case be, and it hereby is, DISMISSED with prejudice under Fed. R. Civ. P. 41(a)(1)(ii).

SO ORDERED.

Acting Secretary of Labor

Washington, D.C.

#### **[ENDNOTES]**

<sup>1</sup> There is presently a vacancy in the office of Secretary of Labor. The Deputy Secretary is authorized to "perform the duties of the Secretary until a successor is appointed. . . ." 29 U.S.C. § 552 (1988).